IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10617 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARNARAYAN EDUCATION TRUST & 1 - Petitioner(s)
Versus
FEE & ADMISSION COMMITTEE FOR PROFESSIONAL COURSES & 1 - Respondent(s)

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Appearance :
MR SAURIN A MEHTA for Petitioner(s) : 1 - 2.
MR SUNIT SHAH for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MRS VD NANAVATI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 12/09/2007

ORAL JUDGMENT

1. Rule. The learned advocates appearing for respective respondents are directed to waive service. The petition is taken up for final hearing and disposal today.

2. The petitioner, which is a Trust is running a Self Financed B.Ed. College. The petitioner approached respondent No.1- Fee Committee for fixing the fees for the college for academic years 2003-04, 2004-05, 2005-06. Being dissatisfied with the figure of fees fixed by respondent No.1- Fee committee chargeable per student per annum, the petitioner alongwith similarly situated Self Financed Institutions preferred petition before this Hon'ble Court alongwith the group of petitions bearing Special Civil Application No.109 of 2005 and cognate matters. The principal petitioner therein was Gujarat State Unaided B.Ed. / B.P.Ed. College Management Association. Vide Judgment dated 10.02.2006, the decision of respondent No.1- Fee Committee dated

14.12.2004 was quashed and set aside and the matter remanded to respondent No.1- Fee Committee for passing appropriate “reasoned and speaking order in accordance with law and on merits” after considering the submissions that may be made by the respective petitioners through their representative, if any, more particularly by one of the office bearers of the petitioner Association with regard to their individual cases, and take appropriate decision within a period of six weeks from the date of receipt of representation of the petitioners. It was also directed that the interim arrangement made by the Court vide order dated 07.02.2005 was to continue till the Committee takes a fresh decision.

3. Subsequent thereto the respondent No.1-Fee Committee has passed a consolidated order on 28.03.2007 in relation to 60 Institutions listed in Annexure-I annexed to the order dated 28.03.2007. The name of the petitioner Institution appears at serial no.2 in the said list. The fees recommended by respondent-Fee Committee for academic years 2003-04, 2004-05, 2005-06 are pegged at a figure of

Rs.24,000/- (Rupees Twenty Four Thousand Only) per student per annum. In the intervening period, the fee structure for subsequent years had also come up for consideration and respondent-Fee Committee has recommended fees for academic years 2006-07, 2007-08 and 2008-09 at a figure of Rs.30,000/- (Rupees Thirty Thousand Only) per student per annum. It is this decision which is under challenge in the present petition.

4. The principal grievance made on behalf of the petitioner is that the impugned decision has been arrived at without assigning any reasons in as much as the respondent-Fee Committee has not considered the merits of individual Institution and that this was the very grievance which was ventilated before this Court in the earlier round of proceedings, despite which the respondent-Fee Committee has ignored the directions made by this Court to pass a reasoned and speaking order.

5. As against that learned Government Pleader appearing on behalf of respondent-Fee Committee has

submitted that the decision of respondent-Fee Committee is perfectly justified and in accordance with law. That all relevant factors necessary for determination of fees have been taken into consideration by respondent- Fee Committee. That principles of natural justice have been followed and the representatives of the Association were permitted to place on record various details, were also permitted to revise their claims, and after hearing such representatives and taking into consideration the material produced, more particularly the audited accounts, the decision has been arrived at. It was, therefore, submitted that no interference as such was warranted.

6. This Court has already stated in its Judgment dated 07.12.2006 in Special Civil Application No.13887 of 2006 in the case of *Swami Narayan Manav Sewa Trust V/s. R.J.Shah Fee & Admission Committee* that this Court does not seat in appeal but merely reviews the decision making process. The action of respondent-Fee Committee has to be tested in light of this legal position.

7. In the case of Islamic Academy of Education and Another Vs. State of Karnataka and others (2003) 6 SCC 697, it has been laid down that:

> *"Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/ or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/ surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise."*

Stating thus, the Apex Court has set out the composition of the Committee which shall be entitled to fix the fees till the point of time the Government frames appropriate statute and regulations. Thereafter the Apex Court has specified as to how the Committee is expected to function in the following words :

"Each educational Institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and books of accounts must also be produced before the committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the Committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations, the same would amount to charging of capitation fee."

8. This was followed by the Apex Court decision in the case of *P.A.Inamdar* and Others V/s. State of Maharashtra and Others (2005) 6 SCC 537, wherein in paragraph Nos. 149 & 150 of the decision it has been observed :

"149. xxx xxx xxx We expect the Committees, so long as they remain functional, to be more sensitive and to act rationally and reasonably with due regard for realities. They should refrain from generalising fee structures and, where needed, should go into accounts, schemes, plans and budgets of an individual institution for the purpose of finding out what

would be an ideal and reasonable fee structure for that institution.

150. We make it clear that in case of any individual institution, if any of the Committees is found to have exceeded its powers by unduly interfering in the administrative and financial matters of the unaided private professional institutions, the decision of the Committee being quasi-judicial in nature, would always be subject to judicial review".

9. Applying the aforesaid principles it becomes apparent that as already stated in the earlier judgment rendered in case of *Swami Narayan Manav Sewa Trust* (Supra) the Committee has failed to grasp the duties assigned to the Committee by the aforesaid decisions of the Apex Court. There is no data in the impugned order which would show that the respondent-Fee Committee was aware of the exercise that the respondent-Fee Committee was required to undertake while fixing the fees. The Apex Court has laid down that the role of respondent-Fee Committee is to ensure that a private unaided Education Institution does not charge any other amount over and above prescribed fees either under the head of donation or under any other head as the same would amount to

charging of capitation fees and/or profiteering. The role of respondent-Fee committee is primarily to oversee that the self Financed Institution while collecting fees does not profiteer from that, while at the same time makes reasonable profits which can be ploughed back for the betterment of the institution.

10. When one reads the impugned order dated 28.03.2007 the only paragraph which is relevant for ascertainment of the decision making process is paragraph No.10 which reads as under:

> *10. Considering the above reasons and directions issued by Hon'ble High Court, the fee structure of the institutes listed in Annexure-I are fixed on the basis of the audited accounts submitted by the Institute. The audited accounts covered the cost of infrastructure i.e. capital expenditure spread out over a period of 20 years and full credit of recurring expenditure that includes pay and allowances of teaching and non-teaching staff, library, consumables and other adminitrative expenditure, etc. were*

considered to arrive at the above annual fee.

11. The aforesaid paragraph in no way reflects either compliance with the directions made by this Court in the earlier round of proceedings between the same parties or the Committee being alive to the directions made by this Court in the Judgment dated 07.12.2006 rendered in case of *Swami Narayan Manav Sewa Trust (Supra)*. As stated by the Apex Court, each institution is entitled to have its own fee structure. Each Institution must place before the Committee the proposed Fee structure accompanied by all relevant documents, books of accounts and other relevant material for scrutiny by the Committee. The Committee is then required to decide whether the Fees proposed by that particular Institution are justified, and such decision has to be in context of determination as to whether the proposed fee structure is for the purposes of profiteering and/or charging of capitation fees. It is only after recording such a decision that the Committee becomes entitled to propose some other fee which can be charged by the Institution. The sentence by the Apex Court in the case of *Islamic Academy of Education and*

Another V/s. State of Karnataka and others (supra) "the Committee will be at liberty to approve the Fee structure or to propose some other fee which can be charged by the Institute" makes the aforesaid position more than abundantly clear.

12. In the present case, the impugned order in no way reflects the committee having undertaken such an exercise. In the first instance, there is no finding or recording of facts as to what is the proposed Fee structure and why and how the same is not acceptable. Only after recording such a finding can the committee take the next step of proposing a different Fee structure, different from the one proposed by the Institution. It is not necessary to set out all the relevant factors for the purposes of such an exercise by the Committee as the same have been articulated by the Apex Court decisions. But the first and foremost finding that the Committee is required to record is that the proposed Fee structure by a self Financed Institution is for the purposes of profiteering or charging of capitation fees. Such a decision will have to be based on the facts and

evidence as may be applicable in each individual case and there cannot be any common yardstick for recording such a finding, e.g. the number of students whose strength has been sanctioned by NCTE while granting recognition.

13. In the aforesaid set of facts and circumstances of the case it is apparent that the impugned order dated 28.03.2007 cannot be permitted to operate and the same is hereby quashed and set aside. Till the committee records a fresh decision, the petitioner College shall not collect any higher amount from the students except the amount permitted by the interim order made by this Court in the earlier round of proceedings, but at the same time bring to the notice of the students, not only the outcome of this petition, but the pendency of the proceedings before the Committee so as to enable the students to intervene and make their submissions as and when hearing is granted to the petitioner by the respondent-Committee. The respondent-Committee is directed to record its decision within a period of six weeks commencing from 24th September, 2007.

14. During course of hearing one of the grievances ventilated on behalf of the present petitioner and some of the others similarly situated petitioners was to the fact that the proposal accompanied by various details, including audited accounts, despite having been placed on record of respondent-Fee Committee, the respondent-Fee Committee has been calling for such details repeatedly. To obviate such a situation the petitioner and similarly other situated petitioners are directed to file a copy of original proposal made for the first time within a period of one week from today i.e. latest by 20th September, 2007.

15. It is made clear that the Committee shall hear the representations of each self Financed Institution only in relation to proposal already made and no further details or revised claims shall be made by the self Financed Institutions. It will be open to the representatives of the self Financed Institutions to bring to the notice of the respondent- Fee Committee any case law that they may

desire to place on record before the Committee.

16. Accordingly, the impugned order dated 28.03.2007 is hereby quashed and set aside and the matter remanded to respondent-Fee Committee subject to aforesaid directions. Rule made absolute. There shall be no order as to costs.

(D.A.MEHTA, J.)

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